

# **JOINT COMMITTEE ON ADMINISTRATIVE RULES**

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:  
SEN. MAGGIE CROTTY

CO-CHAIR:  
REP. ANGELO "SKIP" SAVIANO

EXECUTIVE DIRECTOR:  
VICKI THOMAS



700 STRATTON BUILDING  
SPRINGFIELD, ILLINOIS 62706  
211/785-2254

SEN. PAMELA ALTHOFF  
SEN. DON HARMON  
SEN. JOHN O. JONES  
SEN. DALE A. RIGHTER  
SEN. IRA SILVERSTEIN  
REP. GREG HARRIS  
REP. LOU LANG  
REP. DONALD L. MOFFITT  
REP. ROSEMARY MULLIGAN  
REP. ANDRE' THAPEDI

## **MINUTES**

**August 14, 2012**

### **MEETING CALLED TO ORDER**

The Joint Committee on Administrative Rules met on August 14, 2012 at 11:00 a.m. in Room 600C of the Michael A. Bilandic Building in Chicago, Illinois.

Co-Chair Crotty called the meeting to order and announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee hearings. Other persons are encouraged to submit their comments in writing.

### **ATTENDANCE ROLL CALL**

X Senator Pamela Althoff	X Representative Greg Harris
X Senator Maggie Crotty	X Representative Lou Lang
X Senator Don Harmon	X Representative Donald Moffitt
X Senator John O. Jones	X Representative Rosemary Mulligan
X Senator Dale Righter	X Representative Angelo "Skip" Saviano
X Senator Ira Silverstein	X Representative Andre' Thapedi

### **APPROVAL OF THE MINUTES OF THE JULY 10, 2012 MEETING**

Representative Saviano moved, seconded by Representative Thapedi, to approve the minutes of the July 10, 2012 meeting. The motion passed unanimously.

### **REVIEW OF AGENCY RULEMAKINGS**

***Department of Healthcare and Family Services – Medical Assistance Programs (89 Ill. Adm. Code 120; 36 Ill. Reg. 10253) (Emergency)***

Representative Harris moved, seconded by Senator Righter, that JCAR object to this emergency rule because it allows HFS to determine outside of rule the approved provider types that may participate in the Department's Recipient Restriction Program. Although PA 97-689 authorizes HFS to determine approved provider types, it does not override the IAPA's requirement that all agency policy be created in rule. The motion passed unanimously.

***Department of Healthcare and Family Services – Medical Payment (89 Ill. Adm. Code 140; 36 Ill. Reg. 11329) (Emergency)***

Senator Althoff moved, seconded by Senator Silverstein, that JCAR object to Section 140.443(h) of this emergency rule, adopted using the SMART Act's unique emergency rulemaking authority. This provision was not required by the SMART Act (PA 97-689). The SMART Act limited nursing homes to a 14 day prescription supply limit, but not the other long term care facilities. The emergency rule includes all the long term care facilities. The motion passed unanimously.

***Department of Healthcare and Family Services – Hospital Services (89 Ill. Adm. Code 148; 36 Ill. Reg. 10326)***

Representative Mulligan moved, seconded by Senator Jones, that JCAR object to Section 148.190(a)(2) of this emergency rule because this provision is contrary to Section 5-4.1 of the Public Aid Code that states that no co-payment shall be charged for emergency room encounters for medical emergencies.

**CONSIDERATION OF OTHER RULEMAKINGS**

Co-Chair Crotty asked if any members wanted to request consideration of any other rulemaking. Senator Harmon requested consideration of a PCB rulemaking. Representative Saviano requested consideration of an HFS rulemaking. Representative Thapedi also requested consideration of an HFS rulemaking.

***Pollution Control Board – Clean Construction and Demolition Debris Fill Operations (35 Ill. Adm. Code 1100; 36 Ill. Reg. 2801)***

Senator Harmon moved, seconded by Representative Moffitt, that JCAR recommend that PCB give further consideration to whether groundwater monitoring should be required for these facilities. This would give the Board the opportunity to receive further comment from parties who may not have submitted their supportive views when groundwater monitoring was an element of this proposal and who may have opinions and information to offer in light of the Board's decision to remove that requirement before going to 1<sup>st</sup> Notice on this rulemaking. The motion passed 11-1-0. (No – Mulligan)

***Department of Healthcare and Family Services – Medical Payment (89 Ill. Adm. Code 140; 36 Ill. Reg. 11329) (Emergency)***

Representative Saviano moved, seconded by Representative Lang, that JCAR object to and suspend Section 140.442(e)(4) of this emergency rule, adopted using the SMART Act's unique emergency rulemaking authority, because the provision was not required by the SMART Act. JCAR finds that this use of SMART Act's extraordinary rulemaking authority to adopt policy not required by the SMART Act is contrary to the public interest. The motion passed on a roll call vote of 12-0-0.

Representative Saviano moved, seconded by Representative Lang, that JCAR object to and suspend Section 140.491 of this emergency rule because removal of the exemption from prior approval for transportation of patients from one hospital to another to obtain services not available at the discharging hospital was not required under the SMART Act. Including this non-SMART Act required provision in this emergency rule exceeds the rulemaking authority granted by the SMART Act. JCAR finds that this unauthorized use of the extraordinary emergency rulemaking authority poses a threat to the public interest. The motion passed on a roll call vote of 12-0-0.

***Department of Healthcare and Family Services – Medical Payment (89 Ill. Adm. Code 148; 36 Ill. Reg. 10326) (Emergency)***

Representative Thapedi moved, seconded by Senator Righter, that JCAR object to and suspend Section 148.140(b)(1)(F) of this emergency rule because the elimination of enhanced payment rates for hospital-based physical therapy is not required or authorized by the SMART Act. This change is not part of the general 3.5% hospital rate cut required by the SMART Act and far exceeds that amount. In addition, it affects Safety Net Hospitals and Critical Access Hospitals, which the SMART Act specifically exempts from any rate cuts. This rulemaking was adopted using the extraordinary emergency rulemaking authority created by the SMART Act. That procedure is not to be used for any other purposes. JCAR finds that using SMART Act's unique rulemaking authority to adopt provisions not required by the SMART Act threatens the public interest. The motion passed on a roll call vote of 12-0-0.

Representative Thapedi moved, seconded by Senator Righter, that, while JCAR acknowledges HFS' authority to use the unique SMART Act emergency rulemaking authority, JCAR object to and suspend Section 148.70(g) of this emergency rule because the Department's denial of payment for entire hospital admissions when a Medicare-defined hospital acquired condition occurs is contrary to federal regulations in 42 CFR 447.26(c). By taking more punitive action than required by either the SMART Act or the federal programs, the emergency rules are likely to impede access to care, in contravention of federal statute. JCAR finds that this emergency rule poses a threat to the public interest, safety and welfare. The motion passed on a roll call vote of 12-0-0.

**CERTIFICATION OF NO OBJECTION**

Representative Moffitt moved, seconded by Representative Mulligan, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection or an Extension, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based upon the Agreements for modification of the rulemakings made by the agencies, no Objections will be issued. The motion passed unanimously.

## **AGENCY RESPONSES**

***Department of Public Health – Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300; 35 Ill. Reg. 9927)***

Senator Althoff moved, seconded by Representative Mulligan, to withdraw the prohibition against the filing of this rulemaking, contingent upon and effective with the Department's adoption of the accepted Modifications and the Agreements to the rulemaking. (The Committee originally issued this Filing Prohibition at its 3/6/12 meeting.) The motion passed on a roll call vote of 12-0-0.

***Secretary of State – Department of Personnel (80 Ill. Adm. Code 420; 36 Ill. Reg. 3625)***

Due to the appropriateness of the agency's response, no further action was taken.

## **SEPTEMBER MEETING DATE**

Co-Chair Crotty announced that the next monthly meeting is scheduled for Tuesday, September 11, 2012, at 11:00 a.m., Room 600C, Michael A. Bilandic Building, Chicago IL.

## **ADJOURNMENT**

Senator Harmon moved, seconded by Representative Harris, that the meeting stand adjourned. The motion passed unanimously.

*Min:1208Aug*